

**Programmatic Agreement (PA)
Among the Federal Highway Administration,
the Illinois Department of Transportation,
the Advisory Council on Historic Preservation
and the Illinois State Historic Preservation Officer
Regarding the Implementation of
Delegation of Authority for
Minor Projects of the Federal Aid Highway Program
In the State of Illinois**

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in Illinois authorized by 23 U.S.C. §§ 101 et seq., through the Illinois Department of Transportation (IDOT) (23 U.S.C. § 315); and

WHEREAS, IDOT undertakes Federal minor highway projects that would qualify as Categorical Exclusions (CEs), including Local Public Agency Federal aid projects, as defined in 23 CFR 771, that do not individually or cumulatively have a significant impact on the environment, and therefore may not require the preparation of an environmental document; and

WHEREAS, FHWA has determined that certain types of minor highway projects typically have no effect upon historic properties included in or eligible for inclusion in the National Register and has consulted with the Advisory Council on Historic Preservation (ACHP), and the Illinois State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800 Subpart C) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, IDOT participated in the consultation and has been invited to be a signatory to this PA; and

WHEREAS, IDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (48 Federal Register (FR) 44716) in the fields of archaeology, history and architectural history;

NOW, THEREFORE, FHWA, IDOT, the ACHP, and SHPO agree that the Federal Aid Highway Program shall be administered in accordance with the following stipulations to satisfy the FHWA Section 106 responsibility for all individual undertakings of the program.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

1. Purpose and Scope

A. This PA sets forth the process by which FHWA, with the assistance of IDOT, will meet its responsibilities pursuant to Sections 106 and 110 of the National Historic

Preservation Act (NHPA) (16 U.S.C. § 470f) for undertakings that qualify as CEs (also known as minor projects). For all other Federal Aid Highway Projects, FHWA will carry out the requirements of 36 CFR Part 800 to complete its responsibilities under Section 106 of the NHPA.

B. FHWA Responsibilities - In compliance with its responsibilities under the NHPA, and as a condition of its award to IDOT of any assistance under the Federal Aid Highway Program, FHWA will ensure that IDOT carries out the requirements of this agreement and ACHP policies and guidelines for undertakings subject to this agreement.

C. IDOT Responsibilities

1. Pursuant to this agreement, IDOT will ensure that all cultural resource staff and/or consultants, employed under its contract to conduct work in the field of cultural resources, meet the qualifications set forth in the Secretary of Interior's Professional Qualification standards (48 FR 44716) for such work. These qualified IDOT cultural resources personnel shall have the primary responsibility for implementing this PA

2. In consultation with SHPO and FHWA, IDOT will ensure that the Bureau of Design and Environment (BDE) Manual includes detailed procedures for implementing this agreement.

2. Minor Projects

The following types of undertakings, listed in Appendices A and B, are activities in which IDOT routinely utilizes Federal Aid highway funds and consist of minor projects that generally do not affect historic properties. None of the minor projects listed below will require consultation with or review by the SHPO, provided the undertaking:

- is limited to the activities specified
- is not part of a larger project
- is on an existing transportation facility
- if ground disturbance in previously disturbed soils is specified, occurs in soils previously disturbed by vertical and horizontal highway construction activities
- has no known public controversy based on historic preservation issues

Such minor projects fall into two categories: minor projects that do not require review by IDOT Cultural Resources staff (Category A; Appendix A), and minor projects that do require documentation and review by IDOT Cultural Resources staff to assess the likelihood that historic properties exist in the area of potential effects or determine the degree of existing soil disturbance within the project area (Category B; Appendix B).

For undertakings in Category B, or where questions arise about the need for review of an undertaking in Category A, IDOT Cultural Resources staff shall determine whether a

particular project should be exempt from SHPO review. If the SHPO specifically requests a copy of the documentation for a particular undertaking covered by this stipulation, IDOT will provide SHPO with the requested documentation and, if the project has not already been approved, will review the project in accordance with Stipulation 4 of this Agreement. All of the minor projects listed in Appendices A and B will be subject to regular internal audit by IDOT.

3. Documentation of Minor Projects

A. The project file shall contain documentation referencing and including the description of the specific minor project type from Appendix A or B that qualifies the project as exempt from further Section 106 review.

B. IDOT Cultural Resources staff will utilize the on-line HAARGIS data, most current Historic Bridge Survey Inventory, as well as additional documentation to assure projects are not adjacent to a National Register eligible property or district. Documentation may include construction plans, project area descriptions, soil survey data, photographs, and archaeological documentation.

4. Section 106 Consultation for FHWA Undertakings Not Exempt from Review

For those projects not exempt from review under terms of Stipulation 2, IDOT and FHWA shall review the undertakings in accordance with the procedures found in 36 CFR Part 800. Upon completion of the Cultural Resources Manual required in Stipulation 1, IDOT, using staff and/or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), may independently perform the work and consultation described in the following sections of 36 CFR Part 800 (including any succeeding revisions to the regulations) on behalf of FHWA as follows:

36 CFR § 800.3

- (1) Establish undertaking
- (2) Coordinate with other reviews
- (3) Identify the appropriate SHPO
- (4) Plan to involve the public
- (5) Identify other consulting parties
- (6) Expediting consultation

36 CFR § 800.4

- (1) Determine scope of identification
- (2) Identify historic properties
- (3) Evaluate historic significance
- (4) Results of identification and evaluation

36 CFR § 800.5

- (1) Apply criteria of adverse effect
- (2) Finding of no adverse effect

- (3) Consulting party review
- (4) Results of assessment

A. Consultation with Indian tribes

In recognition of the unique government-to-government relationship between the Federal government and Indian Tribes, FHWA shall take the lead in identifying and establishing consultation with the Indian Tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR § 800.3(c) - (f). FHWA shall ensure that consultation with Indian Tribes is initiated early in project planning to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration of such concerns in the planning process.

B. Participation of other Consulting Parties and the Public

IDOT will seek and consider the views of the public, as appropriate, in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties. Public involvement in planning and implementation of undertakings covered by this Agreement shall be governed by FHWA's and IDOT's policies and procedures for compliance with the National Environmental Policy Act (NEPA).

Certain minor projects covered by this Agreement may require that IDOT involve consulting parties in consultation. IDOT will identify consulting parties pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c)(5) and 800.3(f).

C. Finding of "No Historic Properties Affected"

If IDOT determines, in consultation with any Indian tribes or other parties invited to participate in consultation in accordance with 36 CFR 800.3(c) – (f), that no historic properties will be affected by the undertaking, IDOT will make a finding of "no historic properties affected," and documentation (800.11[d]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to consulting parties and will be made available for public inspection if appropriate. IDOT may proceed with the project if the SHPO has concurred, in writing, with the finding or if within 30 days of receipt neither SHPO nor another consulting party has objected to the finding. If the SHPO or any consulting party objects, in writing, to IDOT's finding within 30 days of receipt of an adequately documented finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6. If IDOT determines, in consultation with the SHPO and consulting parties, that historic properties may be affected by the undertaking, IDOT shall apply the Criteria of Adverse Effect, 36 CFR Part 800.5(a)(1).

D. Finding of “No Adverse Effect”

If IDOT determines, in consultation with consulting parties, that the undertaking will have no adverse effect on historic properties, it will make a finding of “no adverse effect,” and documentation (800.11[e]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to consulting parties and will be made available for public comment as appropriate. IDOT may proceed with the project if the SHPO has agreed, in writing, with the finding or if within 30 days of receipt neither the SHPO nor another consulting party objects to the finding. If SHPO or any consulting party objects within 30 days of receipt of adequate documentation, in writing, to IDOT's finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6.

E. Finding of “Adverse Effect”

If IDOT determines, in consultation with the SHPO and consulting parties, that the undertaking will have an adverse effect on historic properties, it will notify FHWA and FHWA will ensure the Section 106 process is completed in accordance with 36 CFR 800.6. FHWA will be responsible for making a finding of “adverse effect” and the resolution of those effects.

5. Unanticipated Discovery

If any unanticipated discoveries of historic properties, sites, artifacts, or objects are encountered during the implementation of any project exempted under this PA, IDOT and FHWA shall comply with 36 CFR 800.13 by stopping work in the immediate area and informing the SHPO, housed in the Illinois Historic Preservation Agency (IHPA) of such unanticipated discoveries or effects within two (2) business days.

If any unanticipated effects on historic properties are found to be occurring during the implementation of any project exempted under this PA, IDOT and FHWA shall comply with 36 CFR 800.13 and inform the SHPO immediately.

If any human remains are encountered during the implementation of any project exempted under this PA, work shall cease in the immediate area and the human remains left undisturbed. IDOT and FHWA will follow the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) when there is a discovery of human remains or burials on Federal lands. In the event of an inadvertent discovery of human remains or burials on non-federal lands during transportation construction activities, IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act). If the remains are determined to be Native American, FHWA will notify the appropriate federally recognized Indian Tribes.

Work on the portion of the site where human remains are found shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the SHPO and any appropriate consulting parties. The plan will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq., and all other appropriate federal and state guidelines, statutes, rules, and regulations.

6. Monitoring

A. IDOT, FHWA and the SHPO will consult as needed to review implementation of the terms of the PA.

B. FHWA and IDOT may monitor activities carried out pursuant with this agreement, and the SHPO and ACHP will be invited to participate. IDOT shall cooperate in carrying out the monitoring effort. Should monitoring or other activities result in evidence that the requirements of this PA need modification or are not being met, FHWA will consult with the SHPO, ACHP, and IDOT to develop and implement corrective measures.

7. Dispute Resolution

A. If the Illinois SHPO, IDOT, the ACHP, or a consulting party for an individual undertaking carried out under the terms of this agreement objects in writing to the FHWA regarding any action carried out or proposed with respect to the implementation of this PA, then FHWA shall consult with the objecting party to resolve this objection. If after such consultation FHWA determines that the objection cannot be resolved through consultation, then FHWA shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- 1) Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
- 2) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection.

B. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence with the proposed response to the objection.

8. Terminate, Modify, and Amend

A. Any party to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project review pursuant to 36 CFR Part 800.

B. In consultation with IDOT, SHPO and the ACHP, FHWA will review the effectiveness of this PA every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the PA may be extended for another ten years with the written agreement of the parties.

C. Any party to this agreement may request that it be amended, whereupon the parties shall consult to consider such amendment. The amendment will be effective on the date a copy is signed by all of the original signatories. The lists of minor projects in Appendices A and B may be modified by the mutual written agreement of FHWA, IDOT, and the SHPO, and shall not require a formal amendment to this agreement.

Execution and implementation of this PA evidences that the Federal Highway Administration has satisfied its Section 106 responsibilities for all individual undertakings of highway projects covered under this agreement.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

Norman R. Stoner, Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler, Executive Director

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

Anne Haaker, Deputy State Historic Preservation Officer

ILLINOIS DEPARTMENT OF TRANSPORTATION

Christine Reed, Director of Highways

APPENDIX A
Category A
(Minor Projects Requiring No Review by IDOT Cultural Resources Staff)

Category A consists of projects that, by their nature, have little to no potential to cause effect to historic properties and do not require review by IDOT Cultural Resources Staff, provided they are not in or adjacent to a historic district or property.

1. All work to be done on bridges less than 50 years of age and not listed or determined to be eligible for inclusion in the National Register of Historic Places.
2. All work within existing interchanges and within medians of divided highways in previously disturbed soils.
3. Replacement, repair, lining, or extension of culverts and other drainage structures which do not extend beyond or deeper than previous construction limits, and do not exhibit stone or brick structures or parts therein.
4. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will not be required.
5. Repair or replacement of existing lighting, signals, and other traffic control devices in previously disturbed soils.
6. Repair or replacement of existing safety appurtenances such as guardrails, barriers, glare screens, and crash attenuators in previously disturbed soils.
7. Fencing and landscaping in previously disturbed soils.
8. Railway crossing signs and signal installation or modification and surface improvement in previously disturbed areas.
9. Erosion control within previously disturbed soils to prevent erosion of roadways, waterways and bridge piers.
10. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety in previously disturbed areas.
11. Rehabilitation of existing rest areas and truck weigh stations within previously disturbed soils.
12. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.

13. Installation of parking lanes, bi-directional lanes, turning lanes or climbing lanes within existing right-of-way limits.

14. Storm sewer installation within existing right-of-way limits.

15. Approval of utility installations along a transportation facility within the state right-of-way.

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APPENDIX B
Category B (Minor Projects Requiring Review
by IDOT Cultural Resources Staff to Determine if Field Survey is Required)

Category B consists of projects that, by their nature, have little to no potential to cause effect to historic properties but which require review by IDOT Cultural Resources Staff.

1. Widening of existing roads where less than 15 feet of new right-of-way is required in disturbed soils on each side with the exception of roads located in historic districts or adjacent to historic properties.
2. Bridge projects which consist of widening or replacement of bridges not on or eligible for listing in the National Register of Historic Places that are on or adjacent to the existing alignment and require one (1) acre or less of undeveloped rights-of-way, with the exception of bridges located in historic districts or adjacent to historic properties.
3. Construction of turning and auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes), or shoulder widening in areas previously disturbed by vertical and horizontal construction activities except when adjacent to or within a National Register listed or eligible property, including bridges and historic districts.
4. Construction of bicycle and pedestrian lanes, paths, and facilities except when adjacent to or within a National Register listed or eligible property, including bridges and historic districts.
5. Replacement of roadway or structural features in kind (such as brick pavement, retaining walls, lighting, railing, etc.) within Historic Districts or adjacent to Historic Properties.
6. Repair by replacement in kind of features on structures listed in the Historic Bridge Survey, e.g., railing, roadway surface, lighting, piers.